

# "Saved by the Militia!"

*Arming an Army against Terrorism*

By Randy E. Barnett

The next time someone tells you that the militia referred to in the Second Amendment has been "superceded" by the National Guard, ask them who prevented United Airlines Flight 93 from crashing into the White House or Capitol. The National Guard? The regular Army? The D.C. Police Department? None of these had a presence on Flight 93. Terrorists and criminals are well aware that they cannot be everywhere—indeed, they count on it. But the people the Founders referred to as the "general militia" is everywhere. Cell-phone calls from the plane revealed that it was members of the general militia, not law enforcement, who successfully prevented Flight 93 from reaching its target.

The characterization of these heroes as members of the militia is not just the opinion of one law professor. It is clearly stated in Federal [and New Jersey] statutes: According to Section 311 of US Code, Title

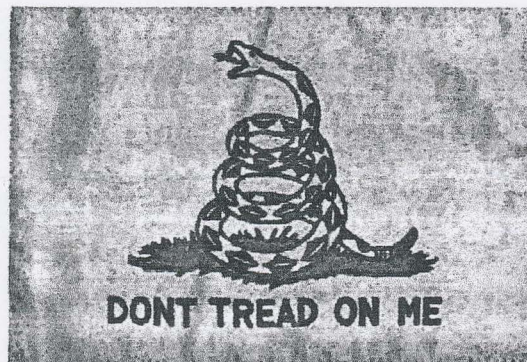
10, entitled, "Militia: composition and classes" "(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard. "(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and (2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia."

This is not to score political points at a moment of great tragedy. Rather, we must acknowledge that it was militia members who stopped the terrorists' attack at the cost of their lives. Here is the cold hard fact of the matter.

Whether on an airplane, subway, cruise ship, or in school oftentimes only the "unorganized militia" will be available when domestic or foreign terrorists chose their next moment of murder.

Yet if the general militia is now "unorg nized" and neutered — if it is not well-regulated — whose fault is it? Article I of the Constitution gives Congress full power "to provide for organizing, arming, and disciplining the Militia." The Second Amendment was included in the Bill of Rights in large part because the Founders feared that Congress would neglect the militia (as it has) and, Congress could not be forced by any constitutional provision to preserve the militia. Therefore the only practical means to ensure its continuance was to protect the right of individual militia members to keep and bear their own private arms.



Nonetheless, it is Congress' responsibility to see to it that the general militia is "well-regulated."

A well-regulated militia does not require a draft or any compulsory training. Nor, as Alexander Hamilton recognized, need training be universal. "To attempt such a thing which would abridge the mass of labor and industry to so considerable extent, would be unwise," he wrote in Federalist 29, "and the experiment, if made, could not succeed, because it would not long be endured." But Congress has the constitutional power to create training programs in effective self-defense including training in small arms — marksmanship, tactics, and gun safety — for any American citizen who volunteers. Any guess how many millions would take weapons training at government expense or even for a modest fee?

All these new airline "security" proposals will merely inconvenience millions of citizens. A way around them will always be open to determined mass murderers. Any realistic response to what is likely to happen in the future must acknowledge that calling 911 will not prevent mass murder. Nor will training our youth to be helpless in the face of an attack, avoiding violence at all costs.

Rather than consider self-defense training powerful groups will continue to advocate passivity and disarmament. They will shift our focus to restrictions on American liberties. In fact, House Minority Leader Dick Gephardt says now is the time to consider adopting a national identity "smart" card.

Rather than make war on liberties of the American people Congress should be looking for ways to empower them to protect themselves. The Founders knew that the individual right to keep and bear arms was the principal means of preserving a militia that was "essential" for personal and collective self-defense against criminals foreign and domestic.

The events of September 11, 2001 have shown that the militia is far from obsolete in a world where war is waged by terrorist cells as well as states. It is long past time we heeded the words of the Founders by ending the systematic effort to disarm Americans. Now is the time to consider what it would take in practical terms to well-regulate the now-unorganized militia, so no criminal will feel secure when confronting one or more militia members.

*[Randy E. Barnett is a law professor at Boston University.]*

**Defend America!**

**New Jersey Militia**

P.O. Box 10176

Trenton, New Jersey 08650

[www.njmilitia.org](http://www.njmilitia.org)

732-607-0833